

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ONCOLOGY & RADIATION  
ASSOCIATES, P.A.,**

**Plaintiff,**

**v.**

**BRISTOL-MYERS SQUIBB COMPANY  
and ABI,**

**Defendants.**

**Civil Action No. 1:01CV02313 (EGS)**

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS,  
PRELIMINARILY APPROVING PROPOSED SETTLEMENT, AND  
AUTHORIZING NOTICE TO BE SENT TO THE CLASS**

Upon review and consideration of the (i) Stipulation of Settlement dated March 14, 2003, executed on behalf of Plaintiff Oncology & Radiation Associates, P.A. ("Plaintiff"), individually and as representative of the proposed class (as defined herein), and on behalf of Bristol-Myers Squibb Company ("Bristol"), and the exhibits attached thereto; and (ii) Stipulation of Settlement dated May 8, 2003, executed on behalf of Plaintiff Oncology & Radiation Associates, P.A. ("Plaintiff"), individually and as representative of the proposed class (as defined herein), and on behalf of American BioScience, Inc. ("ABI") (collectively, the "Settlement Agreements"), it is hereby ORDERED as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AND  
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

1. This Court finds that it has jurisdiction over this Action and each of the parties to the Settlement Agreements.

2. The terms of the Settlement Agreements are hereby preliminarily approved and discovery is hereby stayed except to the extent discovery is necessary with respect to opt outs and for purposes of administering and consummating the Settlement Agreements, subject to further consideration thereof at the hearing on final settlement (the "Fairness Hearing") provided for below. The Court finds that the settlement encompassed by the Settlement Agreements (the

“Settlement”) is sufficiently within the range of reasonableness so that notice of the Settlement should be given as provided in Paragraphs 6, 7 and 8 of this Order.

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**CLASS CERTIFICATION**

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby conditionally finds that the prerequisites for a class action have been met and conditionally certifies the following class (the “Class”) for settlement purposes only:

All persons and entities in the United States who purchased Taxol directly from Bristol or its subsidiaries at any time from January 1, 1999, through March 14, 2003. Excluded from the class are defendants, their parents, subsidiaries and affiliates, and government entities.

4. The Court further hereby conditionally finds that Plaintiff is an adequate class representative for the Class. If the Settlement Agreements are terminated or are not consummated for any reason whatsoever, the certification of the Class shall be void, and Plaintiff, Bristol and ABI (the “Settling Entities”) shall have reserved all of their rights to propose or oppose any and all class certification motions and to contest the adequacy of Plaintiff as a representative of any putative plaintiff class.

5. Cohen, Milstein, Hausfeld & Toll, P.L.L.C. is appointed as lead counsel for the Class (“Lead Counsel”).

**NOTICE TO POTENTIAL CLASS MEMBERS**

6. Within 20 days after the date of entry of this Order, Lead Counsel shall cause copies of the Notices of Proposed Settlement and Settlement Hearing, substantially in the form attached as Exhibit A hereto, to be mailed by first class mail, postage prepaid, to all members of the Class, to the extent that they can be identified with reasonable diligence.

7. Lead Counsel shall cause to be published a summary notice, which shall be substantially in the form attached as Exhibit B hereto (“Publication Notice”) one day a week for two consecutive weeks in the Modern Healthcare Magazine and The Pink Sheet, as soon as practicable after Mail Notice, and in all events, at least 30 days prior to the Fairness Hearing.

8. Prior to the Fairness Hearing, Lead Counsel shall serve and file a sworn statement attesting to compliance with the provisions of Paragraphs 6 and 7 of this Order.

9. The foregoing notice provisions are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

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**CLAIMS ADMINISTRATION**

10. To effectuate the Settlement and Notice provisions, Lead Counsel has designated Complete Claim Solutions as the Settlement Administrator, which designation is hereby approved, to be responsible for: (a) establishing a P.O. Box and toll-free phone number (to be included in the Notices to the Class) for the purpose of communicating with Class members; (b) disseminating notices to the Class; (c) accepting and maintaining documents sent from Class members including opt-out forms, claim forms, and other documents relating to claims administration; and (d) administering claims for allocation of funds among Class members.

11. As described in the Notices to the Class, any Class member may opt out of the Class by mailing a completed Request for Exclusion to the Settlement Administrator within 45 days after the date on which Notice is mailed to the Class. Persons or entities that request exclusion from the Class will not be entitled to share the benefits of Settlement, nor be bound by any judgment, whether favorable or adverse.

12. Any potential member of the Class that does not properly and timely mail a Request for Exclusion as set forth in Paragraph 11 above shall be included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Class shall have objected to the Settlement and whether or not such potential member of the Class makes a claim upon or participates in the Settlement.

**FEE PETITION, INCENTIVE AWARD, AND MOTIONS FOR FINAL APPROVAL  
AND APPROVAL OF PROPOSED PLAN OF ALLOCATION**

13. On or before July 22, 2003, counsel for the Class shall file their application for attorneys' fees and expenses (the "Fee Petition"), an application for an incentive award for Plaintiff, a motion for final approval of the Settlement, and a motion for approval of their proposed plan of allocation of net settlement proceeds to the Class.

**THE FAIRNESS HEARING**

14. A Fairness Hearing is hereby scheduled to be held on August 15, 2003 at 11:30 a.m. in Courtroom One before the undersigned to consider: (a) the fairness, reasonableness and adequacy of the Settlement; (b) the Fee Petition and application for an incentive award, and (c) whether to approve the proposed plan of allocation.

15. Any member of the Class that has not filed a Request for Exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement, the Fee Petition and incentive award, or plan of allocation; provided, however, that no person shall be heard in opposition to the Settlement, the Fee Petition and incentive award, or plan of allocation, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before a date to be set in a subsequent order (but in no event less than thirty (30) days before the Fairness Hearing), such person: (a) files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlement, the Fee Petition and incentive award, or plan of allocation and any documentation in support of such opposition; and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Lead Counsel and counsel for Bristol and ABI.

16. The date and time of the Fairness Hearing shall be set forth in the Mail Notice and

Publication Notice, but shall be subject to adjournment by the Court without further notice to the members of the Class other than that which may be posted at the Court and on the Court's website.

#### **OTHER PROVISIONS**

17. Terms used in this Order that are defined in the Settlement Agreements are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreements.

18. In the event the Settlements are terminated in accordance with the provisions of the Settlement Agreements, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreements, and without prejudice to the status quo ante rights of Plaintiff, Bristol and ABI, and the members of the Class.

19. If the Settlements are terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the Plaintiff and Defendants will have sufficient time to prepare for the resumption of litigation, including but not limited to the completion of discovery, preparation of expert reports, the filing of a summary judgment motion or motions, and preparation of trial.

**SO ORDERED** this 13th day of May, 2003.

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Hon. Emmet G. Sullivan  
United States District Judge